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Calendar No. 774

98TH CONGRESS } SENATE { REPORT
2d Session } { 98–394

WATER RESOURCES DEVELOPMENT AND FISHERIES FACILITIES, YAKIMA RIVER BASIN, WASH.

APRIL 12 (legislative day, MARCH 26), 1984.—Ordered to be printed

Mr. BAKER (for Mr. MCCLURE), from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1027]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1027) to amend Public Law 96–162 having considered the same, reports favorably thereon with an amendment to the text in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof:

That Public Law 96–162 (relating to the Yakima River Basin Water Enhancement project-feasibility study) (93 Stat. 1241) is amended by adding the following new sections at the end thereof:

SEC. 2. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act, 94 Stat. 2697, (hereafter, the Northwest Power Act) is authorized to accept funds from any entity, public or private, to design, construct, operate, and maintain fish facilities within the Yakima River Basin, and thereafter to design, construct, operate, and maintain such facilities.

SEC. 3. The Secretary of Energy, acting by and through the Bonneville Power Administration (hereinafter, Bonneville) is authorized to transfer funds, not to exceed $13,500,000, in the manner and amount determined by Bonneville to the Secretary of the Interior to design and construct the fish facilities authorized under section 2 of this Act, in accordance with the Northwest Power Act. For the purposes of this Act, Bonneville's transfer of funds to the Secretary of the Interior shall be treated as an expenditure from the Bonneville fund and shall be included in the Bonneville budget in the same manner as other Bonneville expenditures submitted to Congress pursuant to the Federal Columbia River Transmission System Act, 16 U.S.C. 838: *Provided*, That expenditures for ordering screens and constructing fish ladders at Sunnyside and Wapato Diversion Dams are hereby approved.

SEC. 4. There are hereby authorized to be appropriated beginning October 1, 1983, to the Secretary of the Interior for planning, design and construction of

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fish facilities in the Yakima River Basin, $17,000,000, plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs indexes applicable to the type of construction involved herein. There are also authorized to be appropriated to the Secretary of the Interior such additional sums as may be required for the operation and maintenance of the fish facilities authorized by this Act: *Provided*, That operation and maintenance costs related to anadromous fish which are in excess of present obligations, as determined by the Secretary of the Interior, shall be nonreimbursable and nonreturnable.

SEC. 5. The fish facilities authorized by this Act at Federal and non-Federal works shall become features of the Yakima River Basin Water Enhancement Project (hereinafter, Yakima Enhancement Project), if such project is authorized, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The Secretary of the Interior, as he deems appropriate, shall enter into agreements to provide for the operation and maintenance of such fish facilities.

SEC. 6. If the State of Washington, the Yakima Indian Nation, or any other entity, public or private, prior to an authorization or the providing of an appropriation of funds to the Secretary of the Interior to construct the Yakima Enhancement Project, shares in the costs of or constructs any physical element of that project, including fish facilities or any reregulating dam, and conveys the same to the United States, the costs incurred by the State, the Yakima Indian Nation, or other entity in the construction of such elements shall be credited to the total amount of any costs to be borne by the State, the Yakima Indian Nation, or any other entity as contributions toward payment of the cost of the Yakima Enhancement Project; except that no such credit shall be given to any element constructed by the State, the Yakima Indian Nation, or any other entity unless the element has been approved by the Secretary of the Interior prior to its construction. The Secretary shall grant such approval, when requested by the State of Washington, the Yakima Indian Nation, or other entity, if the Secretary determines that the element proposed for construction would be an integral part of the Yakima Enhancement Project. All approved elements constructed by the State, the Yakima Indian Nation, or other entity, as provided in this section, shall be operated and maintained by the Secretary of the Interior.

SEC. 7. The Secretary of the Interior is authorized to accept title to any reregulating dam or fish passage facility constructed by the State of Washington, the Yakima Indian Nation, or any other entity, pursuant to Section 6 of this Act, without giving compensation therefor, and thereafter to operate and maintain such facilities. Any such facility shall be operated by the Secretary in a manner consistent with the treaty rights of the Yakima Indian Nation, Federal reclamation law, and water rights established pursuant to State law, including the valid contract rights of irrigation users. The Secretary of the Interior shall negotiate and enter into agreements for the payment of operation and maintenance costs allocated to irrigation pursuant to Federal reclamation law. Operation and maintenance costs for any reregulating dam or fish passage facility allocated to fish shall be paid for in accordance with the Act of July 9, 1965 (79 Stat. 213).

SEC. 8. Notwithstanding the authorization provided in this Act, the feasibility study authorized by Public Law 96–162 shall continue to include fish facilities as elements of that study.

SEC. 9. (a) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(b) Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

(c) Except as specifically provided in this Act, nothing in this Act shall alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, Indian tribe, or any other entity, public or private.

Purpose

As ordered reported, S. 1027 amends Public Law 96–162 to authorize a program of design, construction, operation, and maintenance of fish facilities in the Yakima River Basin in the State of Washington. The bill provides authority for Federal as well as non-Federal funding of the program. In addition, the bill provides that costs incurred by non-Federal entities for features of the proposed Yakima River Basin Water Enhancement Project shall be credited toward the non-Federal share of the costs of such project.

Background and Need

The history of irrigated agriculture in the Yakima River Basin traces its origins back to the late 1860's when water was first diverted to irrigate crops. Federal involvement in the development of the water resources of the basin began in 1905 under the Reclamation Service, predecessor of the Bureau of Reclamation. The irrigable lands served by the Yakima Project consist of approximately 464,000 acres on both sides of a 175-mile reach of the Yakima River in south central Washington. In addition to irrigation water supplies, the project also provides hydroelectric power with an installed generation capacity of 23 megawatts, incidental flood control, and recreation and fish and wildlife benefits.

In 1977, drought conditions focused attention on the need for further efforts to both expand and assure existing water supplies in the basin. As a result of this heightened interest, the Secretary of the Interior was authorized, by Public Law 96–162 (Act of Dec. 28, 1979), to conduct a feasibility investigation of the Yakima River Basin Water Enhancement Project. The primary objectives of the proposed project are to provide supplemental water to presently irrigated land, provide water to newly irrigated lands of the Yakima Indian Reservation, provide water for increased instream flows for aquatic life, and develop a comprehensive plan for the basin to enable efficient management of existing water supplies. The completion date for the study is 1986.

Historically, the Yakima River supported an estimate 500,000 to 600,000 returning adult salmon annually. By 1920, the number of returning salmon had declined to about 11,000 each year as a result of a number of factors including the construction of water diversion dams and canals without fish ladders or protective screens, partial or total blockage of migratory routes and dewatering of spawning and rearing habitats. Beginning in 1920, efforts were taken to correct the most serious fish passage problems through construction of fish ladders and screens at some diversion dams. As a result, the runs slowly increased between 1920 and 1960, reaching a peak of 19,000 fish. Since then, they have declined to an estimated 2,000 fish.

The first phase of the Bureau of Reclamation's feasibility study has been completed and has identified possible elements of a final plan for the project. Among these is the construction of a reregulating reservoir and fish passage and protective facilities in the Yakima River Basin.

The State of Washington has appropriated $14 million to do advance design and construct the reregulating reservoir. However, this appropriation is contingent upon being able to secure a credit of such funding toward any future costs the State may be required to bear in the event Congress authorizes the Yakima Enhancement Project. Passage of S. 1027 would encourage construction of the reregulating reservoir and facilitate a cooperative Federal/non-Federal program to provide for fish passage facilities in the basin.

The Pacific Northwest Electric Power Planning and Conservation Act of 1980, commonly referred to as the "Northwest Power Act," Public Law 96–501 (Act of Dec. 5, 1980), provided in part for the preparation by the Northwest Power Planning Council of a program to protect, mitigate, and enhance the fish and wildlife resources affected by hydroelectric development in the Columbia River Basin. The "Columbia River Basin Fish and Wildlife Program" was adopted by the Northwest Power Planning Council on November 15, 1982. Noteworthy is the recognition in the program of the potential for at least partial restoration of fish runs in the Yakima River Basin. Passage of S. 1027 would provide for implementation of many of the fish facilities for the Yakima River Basin included in the program. Consideration of S. 1027 by the Committee on Energy and Natural Resources is the first action taken by Congress after passage of the Northwest Power Act which implements elements of the program proposed by the Council.

Legislative History

S. 1027 was introduced on April 12, 1983, by Senators Gorton and Jackson and is cosponsored by Senator Evans. The Subcommittee on Water and Power held a hearing (S. Hrg. 98–224, Pt. 3) on September 15, 1983, at which time the Administration testified in support of the bill, if amended.

The Senate Committee on Energy and Natural Resources, in an open business session on February 29, 1984, by unanimous vote of a quorum present ordered S. 1027 reported with an amendment in the nature of a substitute.

A companion measure, H.R. 653, was introduced in the House on January 6, 1983, by Congressman Morrison for himself and Congressmen Foley, Pritchard, Bonker, Dicks, Lowery (Washington), Swift, and Chandler. The measure was referred to the House Committee on Interior and Insular Affairs where a hearing before the Subcommittee on Water and Power was held on May 24, 1983. H.R. 653 was reported (Report No. 98–560) by the Committee on November 17, 1983, and passed the House on March 5, 1984. H.R. 653 is presently pending before the Senate Committee on Energy and Natural Resources.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in an open business session on February 29, 1984 by unanimous vote of a quorum present recommended that the Senate pass S. 1027, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas and 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz	
Mr. Evans	
Mr. Johnston [1]	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum [1]	
Mr. Matsunaga	
Mr. Melcher	
Mr. Tsongas [1]	
Mr. Bradley	
Mr. Levin [1]	

[1] Indicates vote by proxy.

Committee Amendment

The Committee struck all after the enacting clause of S. 1027 and inserted a substitute text in lieu thereof. As ordered reported, S. 1027 adds eight new sections to Public Law 96–162. Section numbers 2 through 9, referenced in this report, refer to the sections that would be added to Public Law 96–162 by S. 1027 as ordered reported.

As originally introduced, S. 1027 would have amended Public Law 96–162 to allow for certain costs incurred by the State of Washington to be credited towards any cost-sharing requirements subsequently included by the Congress in legislation to authorize the Yakima River Basin Water Enhancement Project.

The Committee amendment retains and expands upon this authority so that costs incurred by the State of Washington, the Yakima Indian Nation, or any other entity, public or private, may be so credited.

In addition, the Committee amendment expands the scope of the measure to include a comprehensive Federal/non-Federal program for the financing, construction, and operation of fish facilities in the Yakima River Basin.

The Committee amendment adds new sections to Public Law 96–162 as follows:

Section 2 authorizes the Secretary of the Interior acting pursuant to the Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory and supplementary thereto) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980, 94 Stat. 2697) to accept funds for

and thereafter to design, construct, operate, and maintain fish facilities within the Yakima River Basin.

Section 3 authorizes the transfer of funds not to exceed $13,500,000 from the Bonneville Power Administration to the Secretary of the Interior for the design and construction of the fish facilities referenced in section 2. Bonneville's transfer of funds to the Secretary of the Interior is to be treated as an expenditure from the Bonneville Fund. Section 3 also provides immediate approval for expenditures for ordering screens and constructing fish ladders at Sunnyside and Wapato diversion dams.

Section 4 authorizes the appropriation of $17,000,000, subject to appropriate cost indexing, to the Secretary of the Interior for design and construction of the fish facilities as well as such additional sums as may be required for their operation and maintenance. Operation and maintenance costs related to anadromous fish which are in excess of present obligations shall be nonreimbursable and nonreturnable.

Section 5 provides that fish facilities authorized by the Act shall become features of the Yakima River Basin Water Enhancement Project, if such project is authorized, and that operation and maintenance of such fish facilities shall be integrated and coordinated with other features of the existing Yakima Project. The section also provides authority for the Secretary of the Interior to enter into agreements for the operation and maintenance of the fish facilities.

Section 6 retains and expands the authority originally contained in S. 1027 for crediting expenditures made by the State of Washington for constructing any element of the Yakima River Basin Water Enhancement Project toward any costs to be borne by the State as contributions toward payment for cost of the project. Section 6 expands this concept to include the Yakima Indian Nation, or any other entity, public or private, and requires that such a credit be conditioned upon conveyance of the project element to the United States. S. 1027 had originally conditioned such a credit upon approval of the project element by the Commissioner of the Bureau of Reclamation prior to its construction. Section 6 retains the concept of prior approval but vests such responsibility in the Secretary of the Interior. While S. 1027 required the granting of such approval if it appeared the element proposed for construction is an integral part of the project; section 6 requires the granting of such approval if the Secretary determines that the element proposed for construction would be an integral part of the Yakima Enhancement Project. Section 6 also provides that all approved elements shall be operated and maintained by the Secretary of the Interior.

Section 7 authorizes the Secretary of the Interior to accept title to any reregulating dam or fish passage facility constructed pursuant to section 6 without compensation and to operate and maintain such facilities. Section 7 also provides that the operation of any such facility by the Secretary shall be in a manner consistent with the Treaty rights of the Yakima Indian Nation, Federal reclamation law, and water rights established pursuant to State law, including the valid contract rights of irrigation users. Section 7 also provides that the Secretary shall negotiate and enter into agreements for the payment of operation and maintenance costs allocated to irrigation and that operation and maintenance costs for any reregulating dam or fish pas-

sage facility allocated to fish shall be paid in accordance with the Act of July 9, 1965 (79 Stat. 213).

Section 8 provides that fish facilities will continue to be elements of the feasibility study authorized by Public Law 96–162.

Section 9(a) provides that nothing in the bill shall be construed to affect or modify any treaty or other right of an Indian tribe.

Section 9(b) provides that nothing in the bill shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of the bill (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

Section 9(c) provides that except as specifically provided in the bill, nothing in the bill shall alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, Indian tribe, or any other entity, public or private.

Section-by-Section Analysis*

Section 1.—Self-explanatory.

Section 2.—The basic Federal reclamation law was enacted in 1902 (32 Stat. 388). It has been frequently amended and updated since and encompasses all or parts of hundreds of individual public laws. This section requires that the Secretary act "pursuant to Federal reclamation law." This invokes the basic authorities and limitations thereof for the Secretary of the Interior to carry out the reclamation program. Section 8 of the 1902 Act states in part: "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof. . . ."

Section 2also requires that the Secretary act pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, commonly referred to as the "Northwest Power Act," Public Law 96–501 (Act of December 5, 1980). One of the purposes stated in the Northwest Power Act was "to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation. . . ." (Section 2(6)).

Section 10(h) of the Northwest Power Act further states that: "Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe or

*Section numbers 2 through 9 refer to the sections which are in the proposed amendment to Public Law 96–162.

any other entity or individual. Nor shall any provision of this Act of any plan or program adopted pursuant to the Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right."

It is the intent of the Committee that the Secretary strictly adhere to the limitations of the Federal reclamation law and the Northwest Power Act. S. 1027 is unique and precedential in being the first legislative implementation of the fish and wildlife provisions contained in the Northwest Power Act and the recommendations of the Northwest Power Planning Council as embodied in the Columbia River Basin Fish and Wildlife Program developed pursuant to the Act. It is the intent of the Committee that the Congress should be affirmatively involved in authorizing the Federal fish and wildlife activities implemented pursuant to the Northwest Power Act. The Committee also intends that construction of facilities authorized by this Act, may proceed based upon an analysis of the project's environmental impacts and that no analysis of the cumulative impacts on the basin of numerous potential projects need be completed before these facilities can go forward.

Section 3.—This section authorizes the transfer of funds from the Bonneville Power Administration to the Secretary of the Interior for the design and construction of the fish facilities authorized in section 2. The transfer of funds is to be treated as an expenditure from the Bonneville fund which was established by the Federal Columbia River Transmission System Act (Act of October 18, 1974, 88 Stat. 1376). The Act provides in section 11(b) that

> The Administrator may make expenditures from the fund, which shall have been included in his annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriations acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law. . . .

The Northwest Power Act stipulates in regard to expenditures from the fund for fish and wildlife purposes:

> SEC. 4(h)(10).(A) The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this Act and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this Act. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized

or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund which shall be included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than 15 years and an estimated cost of at least $1,000,000 shall be funded in the same manner and in accordance with the same procedures as major transmission facilities under the Federal Columbia River Transmission System Act.

Bonneville's transfers of funds to the Secretary of the Interior pursuant to this section will be shown in Bonneville's budget in the same manner as are other expenditures made by the Administrator pursuant to section 4(h)(10) of the Northwest Power Act for fish and wildlife protection, mitigation and enhancement. Expenditures for construction of facilities with an estimated cost of at least $1 million and a useful life of more than 15 years will not be made until specifically approved by Act of Congress. S. 1027 provides the specific authority for undertaking construction of such facilities located at Sunnyside and Wapato diversion dams, in fiscal year 1984, and it is the intent of the Committee that all other expenditures by BPA remain subject to further approval by Act of Congress.

Section 4.—This section authorizes the appropriation of $17 million, subject to appropriate cost indexing, to the Secretary of the Interior for design and construction of the fish facilities as well as such additional sums as may be required for their operation and maintenance. Operation and maintenance costs related to anadromous fish which are in excess of present obligations shall be non-reimbursable and nonreturnable.

The funds authorized in section 4 to be appropriated to the Secretary of the Interior for operation and maintenance of the fish facilities authorized by this measure are to cover costs in excess of current obligations. There are obsolete or inoperative fish facilities at most of the diversion dams and associated canals in the Yakima Basin. To the extent these facilities are operative there are existing arrangements whereby such services are funded and performed; in some cases by the Secretary of the Interior acting through the Bureau of Reclamation, the United States Fish and Wildlife Service, or the Bureau of Indian Affairs; in others through reimbursement to the U.S. Treasury of such appropriated funds by Bonneville; and in still others by State or local entities as required by State law or otherwise provided by existing agreements.

Construction of new or rehabilitated fish facilities throughout the Yakima Basin will require a high degree of coordination in operation and maintenance to assure optimum benefit. It is for this reason that the Secretary of the Interior is provided authority in sections 2, 5, 6 and 7 to coordinate and undertake operation and maintenance at the facilities to be constructed and that authorization of funds for that purpose is specifically provided in section 4 of S. 1027.

With respect to fish facilities which are associated with projects which are a part of the Federal Columbia River Power System (Roza Powerplant, Roza Wasteway, and Prosser diversion dams), Bonneville will continue to reimburse the United States Treasury for the share of associated project costs of operation and maintenance attributed to power benefits and the irrigation share returnable from power revenues.

Section 5.—This section provides that fish facilities authorized by the Act shall become features of the Yakima River Basin Enhancement Project, if such project is authorized, and that operation and maintenance of such fish facilities shall be integrated and coordinated with other features of the Yakima Project. The section also provides authority for the Secretary of the Interior to enter into agreements for the operation and maintenance of the fish facilities. The fish facilities that would be authorized by this bill shall be integrated and coordinated with the operation of the existing Yakima Project.

Section 6.—Self-explanatory.

Section 7.—This section, for the most part, is self-explanatory and provides, in part, that operation and maintenance costs for any reregulating dam or fish passage facility allocated to fish shall be paid for in accordance with the Act of July 9, 1965 (70 Stat. 213).

Section 8.—This section provides that the study of fish facilities will continue to be elements of the feasibility study authorized in Public Law 96–162.

Section 9(a).—Self-explanatory.

Section 9(b).—This section stipulates that nothing in this Act shall be construed to authorize appropriation of water or (1) affect the rights and jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or groundwater resource, (2) any interstate compact made by the States, or (3) otherwise alter or establish the rights of the United States, the States, Indian tribes, or any person with respect to any water or water-related right.

It is the intent of the Committee that S. 1027 and the construction and operation of fish facilities pursuant to the authorities of S. 1027 will not affect the application of State water law. It is also the intent of the Committee that S. 1027 not interfere with the application of other Federal statutes with respect to claims for water or water-related rights. It is also the intent of the Committee that S. 1027 will have no effect on Indian rights to water. The Committee intends that S. 1027 shall not be construed as affecting or implying the establishment of a right with respect to any water or water-related right as a result of the construction and operation of the fish facilities authorized by the bill.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1027 as reported.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals as businesses. As reported, S. 1027 would authorize a program of design, construction, operation, and maintenance of fish facilities in the Yakima River Basin and provide that costs incurred by non-Federal entities for features of the proposed Yakima River Basin Water Enhancement Project be credited toward the non-Federal share of the costs of such project.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Other than the normal paperwork associated with construction and operation of projects of a similar nature and the various agreements that may be entered into by the Secretary of the Interior, little, if any, additional paperwork would result from enactment of S. 1027.

Executive Communications

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1027 is set forth below. The Department of Energy's Bonneville Power Administration and the Department of the Interior's Bureau of Reclamation have been asked to comment on the amendment to S. 1027 recommended by the Committee but the comments were not received at the time the report was filed.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., November 16, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 1027, a bill "To amend Public Law 96–162."

This Department supports enactment of S. 1027, but suggests several amendments.

S. 1027 would credit the State of Washington for any costs it incurs in constructing features of the Yakima River Basin Water Enhancement Project prior to construction authorization and prior to the appropriation of funds by the Congress.

The Yakima River Basin Water Enhancement Project involves a joint Federal-State feasibility study which was authorized by the Congress in 1980. Phase I of the study was completed in August 1982 and identified some potential elements that could be considered for early implementation while the detailed feasibility study was proceed-

ing. The feasibility study is scheduled to be completed in fiscal year 1986.

Our principal recommendations on S. 1027 relate to the authority of the Secretary of the Interior and clarification of Federal financial responsibility. We have enclosed specific language for implementing these.

In order to receive credit for costs or contributions borne by the State, section 2 of the bill would require the State to obtain approval from the Commissioner of the Bureau of Reclamation to construct any specific project features. Such a requirement would usurp the authority normally reserved for the Secretary of the Interior acting with the concurrence of the President and the Office of Management and Budget. Therefore, we suggest that the legislation require approval of specific project features by the Secretary of the Interior rather than the Commissioner of Reclamation before the State or other entity begins construction.

We also believe the bill should be amended to clarify that it does not require reimbursement by the Federal Government of costs incurred by the State of Washington in excess of their share of costs for construction of project features, nor does it commit the Federal Government to authorization, construction or any future financial participation in the project.

We support proceeding with construction of early action items such as the East Selah Reregulation Reservoir and fish passage protective measures which can help now to alleviate some of the basin's water resource and anadromous fishery problems. If the State of Washington is willing to fund such early implementation items, we believe it is appropriate to credit such expenditures toward future cost-sharing on the overall Yakima River Basin Water Enhancement Project.

Moreover, a new State law provides authority for the State to fund the construction of the East Selah Reregulating Reservoir as an early implementation item. Under that law, completion of the facility would be transferred to the Bureau of Reclamation for operation and maintenance as part of the Federal Yakima Project. S. 1027 does not provide authority for the Bureau of Reclamation to assume operation and maintenance responsibility of any such features constructed early by the State or other entities, nor do we see a need for such authority at this time.

We are also actively engaged in discussions with Bonneville Power Administration and the Northwest Power Planning Council on future measures to address anadromous fishery problems.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

HAROLD W. FURMAN II,
Assistant Secretary.

DEPARTMENT OF THE INTERIOR SUGGESTED AMENDMENTS TO S. 1027

1. On page 1, line 5, strike out "a new section" and insert in lieu thereof "two new sections".

2. On page 2, lines 4 and 5, strike out "Commissioner of the Bureau of Reclamation" and insert in lieu thereof "Secretary of the Interior".

3. On page 2, lines 5 and 6, strike out "Commissioner shall" and insert in lieu thereof "Secretary may".

4. After page 2, line 12, insert the following new section:

> SEC. 3. Nothing in this Act shall be construed to require reimbursement of costs incurred by the State of Washington for construction of project features or to provide a credit on projects other than those specified in section 2, nor to commit the United States to project authorization, construction, or any future financial participation.".

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1132, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF DECEMBER 28, 1979

(93 Stat. 1241)

That the Secretary of the Department of the Interior is authorized and directed to conduct a feasibility study of the Yakima River Basin Water Enhancement Project, which shall include an analysis by the United States Geological Survey of the water-supply data for the Yakima River Basin. The Secretary is authorized to accept moneys from the State of Washington or other persons or entities, public or private, to assist in the financing of the feasibility study.

SEC. 2. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act, 94 Stat. 2697 (hereafter, the Northwest Power Act), is authorized to accept funds from any entity, public or private, to design, construct, operate, and maintain fish facilities within the Yakima River Basin, and thereafter to design, construct, operate, and maintain such facilities.

SEC. 3. The Secretary of Energy, acting by and through the Bonneville Power Administration (hereinafter, Bonneville) is authorized to transfer funds, not to exceed $13,500,000, in the manner and amount determined by Bonneville to the Secretary of the Interior to design and construct the fish facilities authorized under section 2 of this Act, in accordance with the Northwest Power Act. For the purposes of this Act, Bonneville's transfer of funds to the Secretary of the Interior shall be treated as an expenditure from the Bonneville fund and shall be included in the Bonneville budget in the same manner as other Bonneville expenditures submitted to Congress pursuant to the Federal Columbia River Transmission System Act, 16 U.S.C. 838: Provided,

That expenditures for ordering screens and constructing fish ladders at Sunnyside and Wapato Diversion Dams are hereby approved.

SEC. 4. There are hereby authorized to be appropriated beginning October 1, 1983, to the Secretary of the Interior for planning, design and construction of fish facilities in the Yakima River Basin, $17,000,000, plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs indexes applicable to the type of construction involved herein. There are also authorized to be appropriated to the Secretary of the Interior such additional sums as may be required for the operation and maintenance of the fish facilities authorized by this Act: Provided, That operation and maintenance costs related to anadromous fish which are in excess of present obligations, as determined by the Secretary of the Interior, shall be nonreimbursable and nonreturnable.

SEC. 5. The fish facilities authorized by this Act at Federal and non-Federal works shall become features of the Yakima River Basin Water Enhancement Project (hereinafter, Yakima Enhancement Project), if such project is authorized, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The Secretary of the Interior, as he deems appropriate, shall enter into agreements to prvide for the operation and maintenance of such fish facilities.

SEC. 6. If the State of Washington, the Yakima Indian Nation, or any other entity, public or private, prior to an authorization or the providing of an appropriation of funds to the Secretary of the Interior to construct the Yakima Enhancement Project, shares in the costs of or constructs any physical element of that project, including fish facilities or any reregulating dam, and conveys the same to the United States, the costs incurred by the State, the Yakima Indian Nation, or other entity in the construction of such elements shall be credited to the total amount of any costs to be borne by the State, the Yakima Indian Nation, or any other entity as contributions toward payment of the cost of the Yakima Enchancement Project: except that no such credit shall be given to any element constructed by the State, the Yakima Indian Nation, or any other entity unless the element has been approved by the Secretary of the Interior prior to its construction. The Secretary shall grant such approval, when requested by the State of Washington, the Yakima Indian Nation, or other entity, if the Secretary determines that the element proposed for construction would be an integral part of the Yakima Enhancement Project. All approved elements constructed by the State, the Yakima Indian Nation, or other entity, as provided in this section, shall be operated and maintained by the Secretary of the Interior.

SEC. 7. The Secretary of the Interior is authorized to accept title to any reregulating dam or fish passage facility constructed by the State of Washington, the Yakima Indian Nation, or any other entity, pursuant to Section 6 of this Act, without giving compensation therefor, and thereafter to operate and maintain such facilities. Any such facility shall be operated by the Secretary in a manner consistent with the treaty rights of the Yakima Indian Nation, Federal reclamation law, and water rights established pursuant to State law, including the valid contract rights of irrigation users. The Secretary of the Interior shall

negotiate and enter into agreements for the payment of operation and maintenance costs allocated to irrigation pursuant to Federal reclamation law. Operation and maintenance costs for any reregulating dam or fish passage facility allocated to fish shall be paid for in accordance with the Act of July 9, 1965 (79 Stat. 213).

SEC. 8. Notwithstanding the authorization provided in this Act, the feasibility study authorized by Public Law 96–162 shall continue to include fish facilities as elements of that study.

SEC. 9. (a) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(b) Nothing in this Act shall be construed as authorizing the appropriation of water by any Feedral, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any wather or water-related right.

(c) Except as specificaly provided in this Act, nothing in this Act shall alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, Indian tribe, or any other entity, public or private.

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Calendar No. 811

98TH CONGRESS
2d Session

SENATE

REPORT
98-418

WATER RESOURCES DEVELOPMENT ACT OF 1983

APRIL 27, 1984.—Ordered to be printed

Filed under authority of the order of the Senate of APRIL 26 (legislative day, APRIL 24), 1984

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1739]

The Committee on Energy and Natural Resources to which was referred the bill (S. 1739) to authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 65, strike lines 23 and 24 in their entirety and insert in lieu thereof: "issuance of Federal permits necessary for the construction of a coal slurry pipeline development which would use Missouri River water, should work to".

2. On p. 124, on line 24, after the word "authorized" insert the words "to be constructed by the Secretary".

3. On p. 124, line 25, after the word "or" insert the words "authorized to be constructed by the Secretary".

4. On page 125, line 8, strike paragraph 601(a)(1) and redesignate subsequent paragraphs accordingly.

5. On p. 126, on line 20 after the word "this", strike all that follows through line 22 and insert the following:

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title: *Provided* that, in the case of projects authorized to be constructed in Reclamation States which provide for agricultural water supplies, such projects shall also be subject to Federal reclamation law as amended.

6. On p. 127, line 11, strike the word "navigation" and insert in lieu thereof the words "navigation, agricultural water supplies,".

7. On p. 129, line 13, strike the words "consistent with" and insert in lieu thereof the words "subject to".

8. On p. 130, line 24, following the word "projects", add the following new section:

SEC. 605. After the date of enactment of this Act, the Secretary shall not submit any proposal for the authorization of any water resources project to Congress which has a hydroelectric power component unless such proposal contains comments on the ability of the appropriate Power Marketing Administration to market, under applicable Federal power marketing law, the hydroelectric power expected to be generated by the project but not required for its operation, so as to recover within the periods of time established under applicable law: 100 per centum of the operation, maintenance and replacement costs; 100 per centum of the capital investment allocated to the purpose of hydroelectric power (with interest rates established pursuant to existing law); and any other costs assigned in accordance with applicable law for return from power revenues.

9. On p. 143, line 25, strike "program." and insert in lieu thereof the following:

program: *Provided further,* That the Secretary of the Interior is authorized, to undertake a feasibility study of the additional associated multipurpose water supply and irrigation features of the Gregory County Hydroelectric Pumped Storage Facility and that construction of the Gregory County Hydroelectric Pumped Storage Facility and such additional associated multipurpose water supply and irrigation features shall not be undertaken until the Secretary of the Interior has completed the feasibility report on such additional features and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such features will exceed the costs and that such additional features are physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof.

10. On p. 158, line 11, strike the words "the Secretary of the Interior,".

11. On p. 162, after line 21, add the following new subsection:

SEC. 907. The provisions of this title shall not be applicable to any water resource policy, program, law or project administered by or under the jurisdiction of the Secretary of the Interior.

Purpose

S. 1739 is a comprehensive measure authorizing specific Federal water resource projects and establishing policy for Federal water development. Specific areas of the bill considered by the Senate Commitee on Energy and Natural Resources included:

—Section 217 pertaining to lawsuits concerning the issuance of Federal permits for the construction of a coal slurry pipeline which would use Missouri River water.

—Section 224 which defines policy relating to fish and wildlife mitigation for Corps of Engineers projects.

—Title VI which establishes cost-sharing policy and requirements for Federal water resource project development.

—Section 701(b)(10) which authorizes the appropriation of $1,280,000,000 for the Gregory County Pumped Storage Project in South Dakota which includes up to $100 million for associated water supply and irrigation features to be constructed by the Secretary of the Interior.

—Title IX which establishes a National Board of Water Policy, a State Advisory Committee, and sets general guidelines for the planning and review of Federal water resource development programs.

Legislative History

S. 1739 was introduced on August 3, 1983, by Senators Abdnor and Moynihan. The measure was referred to the Senate Committee on Environment and Public Works and was reported with an amendment in the nature of a substitute on November 17, 1983. For a detailed history of the actions taken by the Committee on Environment and Public Works, see Senate report 98-340.

On April 2, 1984, S. 1739 was referred to the Senate Committee on Energy and Natural Resources for a period not to extend beyond April 27, 1984, for consideration of section 217, section 224, title VI, section 701(b)(10) and title IX. A hearing was held before the Committee on April 9, 1984 at which time the U.S. Army Corps of Engineers, the Department of Interior, and the Department of Energy testified.

The Senate Committee on Energy and Natural Resources, in an open business session on April 25, 1984, by majority vote of a quorum present ordered S. 1739 reported with amendments.

A companion measure, H.R. 3678, the Water Resources, Conservation, Development, and Infrastructure Improvement and Rehabilitation Act of 1983, is presently pending on the House Calendar. See House Report 98-616, parts I, II, and III.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in an open business session on April 25, 1984, by majority vote of a quorum present recommended that the Senate pass S. 1739, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas and 1 nay as follows:

YEAS	NAYS
Mr. McClure	Mr. Chafee[1]
Mr. Hatfield[1]	
Mr. Domenici[1]	
Mr. Wallop[1]	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Matsunaga[1]	
Mr. Melcher	
Mr. Bradley	
Mr. Levin[1]	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENTS

1. This amendment technically clarifies this section to eliminate an incorrect implication of a Federal water use permit.

2. This amendment limits the application of this title to any water resource project or related land resources project authorized to be constructed by the Secretary of the Army in S. 1739.

3. This amendment limits the application of this title to any water resource project or related land resources project authorized to be constructed by the Secretary of the Army after the date of enactment of the Act.

The effect of amendments 2 and 3 is to limit the application of the cost-sharing requirements of title VI to projects authorized to be constructed (either in S. 1739 or future authorizing Acts) by the Secretary of the Army. As originally referred to the Committee, title VI would have been applicable to projects constructed by the Department of the Interior's Bureau of Reclamation. The Committee on Energy and Natural Resources has an established policy of examining Bureau of Reclamation project authorizations on a project-by-project basis. The Committee does not believe that establishment of arbitrary across-the-board requirements for contributions during construction are either prudent or desirable and intends to continue to craft each project authorization to conform with the physical and economic characteristics that dictate the viability of a given project. The Committee notes that the President has addressed the issue of cost-sharing for water resource development projects in a letter to Senator Laxalt dated January 24, 1984. The full text of that letter is set forth in the Executive Communications section of this report.

The Committee also opposes the provisions of title VI regarding flood control cost-sharing, both as applied to Bureau of Reclamation projects and as applied to Corps of Engineers projects. The Committee believes that these provisions raise numerous practical problems that have not been adequately addressed. One example is

the problem of how to allocate the costs of a flood control project among the beneficiaries within a river system. Would Louisiana residents be required to help pay for a flood control project on the upper Missouri River? Would South Dakota residents be required to help pay for a flood control project on the lower Mississippi River?

Another problem is the difficulty in finding an appropriate non-Federal sponsor to share the costs. Would a non-Federal sponsor necessarily be able to require a contribution from all project beneficiaries? If not, wouldn't this mean that some project beneficiaries would pay nothing while others would pay more than their share?

Because of these and other practical problems, the Committee exempted the Bureau of Reclamation from the flood control cost-sharing provisions of title VI. The Committee did not exempt the Corps only because reporting a Committee amendment to do so would have been outside the scope of the agreement reached between the Chairmen and Ranking Minority Members of this Committee and the Environment and Public Works Committee regarding the scope of the re-referral to this Committee. On the floor, members of this Committee intend to offer an amendment to eliminate the cost-sharing provisions of title VI with respect to flood control.

4. This amendment strikes paragraph 601(a)(1) in its entirety.

As originally referred to the Committee in S. 1739, paragraph 601(a)(1) provided that, for projects with hydroelectric features, construction shall not be initiated until the appropriate Power Marketing Administrator determines that the hydroelectric power expected to be generated can be marketed so as to return costs as defined in the paragraph. In effect, the paragraph would give to the Power Marketing Administrators the ability to prevent the intitiation of construction of water resource development projects which had been authorized by the Congress and for which funds had been appropriated, if the project included hydroelectric power generation.

The Committee notes that in the case of multipurpose projects, such an action could prevent the construction of other needed project features which would provide valuable benefits for flood control, agricultural water supply, municipal and industrial water supply, navigation, recreation, and other project purposes. In many instances, the generation of hydroelectric power is inseparable from other project purposes and it would be shortsighted in the extreme to prevent construction of an authorized project. Often, in the construction of multipurpose projects, allowance is made for future water supply needs. The same anticipation of need should be applied to hydroelectric power generation. The past practice of constructing multipurpose projects which provide additional penstocks, powerhouses space, allowance for additional storage, or other project power related features for use in the future should be continued.

It is likely that many of the great multipurpose Corps of Engineers and Bureau of Reclamation projects such as the main stem dams on the Missouri River, the Grand Coulee Dam, or the Columbia Basin Project in Washington State would have been unduly delayed or perhaps never built, if they had been subject to the provisions of 601(a) as reported by the Environment and Public Works

Committee. In striking the paragraph, the Committee notes that power generated at Federal facilities will continue to be marketed pursuant to existing law and would thereby continue to recover the costs identified in the original version of section 601(a)(1).

The Committee believes that the Congress should be fully advised of the ability of the Power Marketing Administrations to market, under applicable Federal power marketing law, the power generated by hydroelectric facilities at Federal projects. The Committee, therefore, amended S. 1739, (see amendment 8) to prohibit the Secretary of the Army from submitting any proposal for the authorization of any water resources project to Congress which has a hydroelectric power component unless such proposal contains comments on the ability of the appropriate Power Marketing Adminstration to market the power.

5. This amendment clarifies that in the case of Corps of Engineers projects authorized to be constructed in Reclamation States which provide for agricultural water supplies, such projects shall also be subject to Federal reclamation law as amended.

6. This amendment adds agricultural water supply features to the list of project features which are not subject to the 5 percent minimum cash contribution requirement in section 602 of S. 1739 as referred to the Committee.

7. This amendment clarifies that cost-sharing agreements for certain features including agricultural water supplies are subject to the project sponsor's ability to pay.

8. This amendment adds a new section 605 which prohibits the Secretary of the Army from submitting any proposal for the authorization of any water resources project to Congress which has a hydroelectric power component unless such proposal contains comments on the ability of the appropriate Power Marketing Administration to market, under applicable Federal power marketing law, the hydroelectric power expected to be generated by the project but not required for its operation, so as to recover within the periods of time established under applicable law: 100 per centum of the operation, maintenance and replacement costs; 100 per centum of the capital investment allocated to the purpose of hydroelectric power (with interest rates established pursuant to existing law); and any other costs assigned in accordance with applicable law for return from power revenues.

9. This amendment authorizes the Secretary of the Interior to undertake a feasibility study of the additional associated multipurpose water supply and irrigation features of the Gregory County Hydroelectric Pumped Storage Facility. Construction of the Gregory County Hydroelectric Pumped Storage Facility and such additional associated multipurpose water supply and irrigation features shall not be undertaken until the Secretary of the Interior has completed the feasibility report on such additional features and submitted such report to the Congress along with his certification that, in his judgement, the benefits of such features will exceed the costs and that such features are physically and financially feasible feasible, and the Congress has authorized the appropriation of funds for the construction thereof.

As originally referred to the Committee, paragraph 701(b)(10) authorized $1,280,000,000 for construction of the Gregory County Hy-

droelectric Pumped Storage Facility in South Dakota. Included in the authorization was $100 million for the development of associated water supply and irrigation features by the Secretary of the Interior. Ordinarily, the Committee does not support authorization of Bureau of Reclamation projects unless a feasibility investigation has been completed by the Secretary of the Interior. This amendment authorizes the Secretary of the Interior to undertake the necessary feasibility study. Construction of the entire project is contingent upon the authorization by the Congress of the water supply and irrigation features of the project.

It is estimated that the feasibility investigation will cost $700,000 and require 3 years for completion.

10. This amendment eliminates the Secretary of the Interior as a member of the National Board of Water Policy.

11. This amendment provides that the provisions of title IX shall not be applicable to any water resource policy, program, law or project administered by or under the jurisdiction of the Secretary of the Interior.

In exempting the programs of the Department of the Interior from title IX, the Committee also notes its opposition to the creation of a National Board of Water Policy and the reinstatement of the water project Principles and Standards. National water policy is best considered by the existing Cabinet Council on Natural Resources and the Environment; a National Board of Water Policy would simply add another layer of bureaucracy to water project decisionmaking. The Principles and Standards lacked necessary flexibility and were wisely replaced by the current Principles and Guidelines. Reinstatement of the Principles and Standards would be a step backward in the effort to establish sound water resources policy.

For these reasons, the Committee removed the Department of the Interior from the jurisdiction of the National Board of Water Policy. On the floor, members of the Committee intend to offer an amendment to delete title IX.

COMMITTEE RECOMMENDATIONS FOR SECTION 224

This section authorizes and requires the Secretary of the Army to undertake fish and wildlife mitigation and enhancement at Corps of Engineers projects. In the case of Corps projects authorized in S. 1739, or previously authorized but not under construction, mitigation is to be undertaken prior to construction or concurrent with acquisition of project land. The section provides blanket authority for the Secretary to undertake mitigation efforts at projects under his authority if the cost per project is less than $7,500,000. For mitigation over $7,500,000, the Secretary must secure an Act of Congress. Mitigation costs are to be allocated among project purposes and are subject to cost-sharing and reimbursement. Fish and wildlife enhancement activities will be conducted at Federal cost when the enhancement provides national benefits. In the case of enhancement measures that do not have a national benefit, non-Federal interests are required to cost share 25 percent, while benefits limited to a single State are 33⅓ percent.

The Committee is concerned that these provisions might be in conflict or inconsistent with the fish and wildlife mitigation and enhancement provisions of the Northwest Power Planning and Conservation Act. Public Law 95-501, Dec. 5, 1980 (94 Stat. 2697) (Northwest Power Act)

The Northwest Power Act provides for a comprehensive scheme for the implementation and repayment of fish and wildlife mitigation and enhancement measures at Corps and Bureau of Reclamation dams covered by the Act.

The Committee considered an amendment to this section which would have precluded its application to Corps dams which are subject to the provisions of the Northwest Power Act. The Committee also considered an amendment which would have made the authority of this section supplementary to the provisions of the Northwest Power Act. However, without the benefit of views by the Administration on this matter, the Committee decided to withhold its judgment on either of these amendments.

The Committee will continue to analyze the relationship of section 224 with the provisions of the Northwest Power Act and expects to recommend an appropriate amendment for consideration by the Senate.

ADDITIONAL COMMITTEE RECOMMENDATIONS

The Committee makes the following recommendations on sections or titles of the bill which although not subject to the referral agreement are matters of jurisdictional interest to this Committee:

Section 210: The Committee believes that due to the Department of the Interior's important role in the rehabilitation of former small-scale hydroelectric facilities that the Department should be included in this program.

Section 216: The Committee recommends that projects authorized by this Act which have agricultural water supply purposes, should be subject to section 8 of the Flood control Act of 1944, in addition to section 202 of the Flood Control Act of 1968.

Section 219: The Committee recommends that the provision of this section be coordinated with the provision of H.R. 71 as reported by the Committee in an effort to create an effective program to address groundwater concerns in the Reclamation States.

Section 220: The Committee recommends that this program be authorized to include the Secretary of the Interior.

Section 308: The Committee is concerned that the authority given to the Secretary of the Army to study and plan for water resource needs in the Trust Territory of the Pacific Islands and the Northern Mariana Islands is not coordinated with the responsibilities of the Secretary of the Interior for insular areas. The Committee will recommend an appropriate amendment during consideration of this measure by the Senate.

Section 313: The Committee recommends that the authority of this section to restore certain portions of the Acequia Systems in New Mexico would be more appropriately and efficiently carried out by the Secretary of the Interior, based upon the department's previous experience in this and other similar systems.

Section 314: The Committee recommends that the Secretary of the Army consult with the Secretaries of the Interior and Agriculture prior to implementing the cropland and irrigation techniques authorized by this section.

Section 324: The Committee recommends that this section be adopted to improve the water supply to the Everglades National Park.

Section 328: The Committee recommends that, in lieu of renaming the recreation area, it shall be dedicated to former Senator John Sherman Cooper. A suitable marker within the recreation area should be authorized as an appropriate memorialization.

Title VIII: Although title VIII of the bill was not formally referred to this Committee, the Committee believes that it may be more appropriate for the Secretary of the Interior to administer the Water Supply Loan program authorized by the title in the 17 Reclamation States, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. Accordingly, the Committee will want to discuss, and possibly amend, title VIII when the bill is brought before the full Senate.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the *Congressional Record* for the advice of the Senate.

Regulatory Impact Evaluation

The regulatory impact of S. 1739 is set forth in Senate Report 98–340. However, in compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources notes that in all likelihood adoption of the amendments to S. 1739 recommended by the Committee would provide for a reduction in the imposition of Government-established standards and economic responsibilities which would be otherwise imposed by S. 1739 as referred to the Committee.

No personal information would be collected as a result of the Committee amendments and therefore there would be no impact on personal privacy.

Other than the normal paperwork associated with the feasibility study and the reporting requirement in regard to Corps of Engineers project proposals submitted to the Congress, the Committee notes that a net reduction in paperwork would result from adoption of the Committee amendments.

Executive Communications

On April 4, 1984, the Committee requested legislative reports on S. 1739 from the Department of the Interior, Department of Energy, U.S. Army Corps of Engineers, and the Office of Management and Budget, but the comments were not received at the time the report was filed.

Set forth below for the information of the Senate is the statement submitted by the Department of the Interior to the Committee during its hearing on April 9, 1984:

STATEMENT OF WILLIAM HORN, DEPUTY UNDER SECRETARY, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

April 9, 1984

Mr. Chairman, it is a pleasure to have this opportunity to appear before your Committee today and to provide you with the Department of the Interior's views on specific portions of S. 1739, the "Water Resources Development Act of 1983." Many sections of this bill have direct impacts on the Department of the Interior's programs as well as those of the other water resource development agencies within the Federal Government. Your attention to this legislation is, therefore, most appropriate. While we have definite concerns about several titles in this legislation, I will confine my remarks to those sections which are the expressed area of concern of your Subcommittee.

Water Policy

I would like to preface my remarks with a word or two about the Administration's recently announced cost-sharing policy for water project development. As the President indicated in his recent letter to Senator Laxalt, a new national water project financing policy has been established which will allow us to get on with the job of completing projects where commitments have already been made and undertaking new construction starts to meet the country's future water needs.

The historic cornerstone for water development in this nation has been one of partnerships between the Federal Government, States and other project beneficiaries. Traditionally, many Federal water project beneficiaries have repaid

the construction costs of their project--this is clearly one form of cost-sharing. The Bureau of Reclamation has used this approach since its inception in 1902. However, it is clear that new partnership arrangements will be necessary to finance projects due to increased costs and budgetary constraints.

In establishing a water project financing policy, the Administration sought to recognize that water development needs, geography, climate, economy, fiscal capacity, and Federal interests all vary from State to State, and region to region. Futhermore, the Federal Government has made prior commitments to individual States with regard to water development within their borders. Because of this great variety of problems, needs, and prior commitments, we believe it is prudent and appropriate that cost-sharing and the financing of new projects be evaluated on a project-by-project basis. Nevertheless, to the extent possible, the criteria used in such an evaluation should be consistent within given water use categories.

We are persuaded that title VI of S. 1739, as presently drafted, conflicts with the President's announced policy of cost-sharing for water resource development projects. I have a copy of the President's January 24, 1984, letter outlining his water project development policy and ask that it be made a part of the record.

The water project financing and cost-sharing policy adopted by President Reagan applies to all Federal water resources development agencies, including the Department of the Interior's Bureau of Reclamation and the U.S. Army Corps of Engineers. In adopting this policy, the President rejected the imposition of fixed percentages for establishing cost-sharing partnerships and opted for an approach

which is flexible, fair, and fiscally responsible. Each water resource agency can negotiate with project sponsors and the States to arrive at cost-sharing provisions for projects under its jurisdiction. Many of the considerations outlined in section 602, 603, and 604 would form a basis to begin such negotiations.

Cost-sharing may include up-front contribution or financing, repayment at the prescribed interest rate, and a payment of operating and maintenance costs. This last category is almost always the responsibility of the user. Using this definition the Bureau has been cost-sharing on projects since its inception in 1902. Where the President's new policy affects Reclamation most is in the encouragement of more non-Federal up-front financing of both the planning and construction phases of a project. Since the need and financial condition of each potential project sponsor varies considerably it is necessary to negotiate the cost-sharing arrangments on a case-by-case basis.

Policy considerations aside, title VI, as drafted, is unclear. The cause of this could well be that ambiguous terms are used with little or no definitions in title VI. The Bureau of Reclamation's use of the term cost-sharing refers to the allocation of project costs between Federal and non-Federal interests during the life of the project.

We strongly oppose the provisions of title IX, which would create another Federal entity, known as the National Board of Water Policy, with functions duplicating existing activities. While we do not disagree with some of the objectives of the proposed National Board, most of these matters are being adequately addressed by

existing entities. Therefore, there is clearly no need for a new organization, particularly one of the dimensions described and with its attendant costs.

The Cabinet Council on Natural Resources and Environment is the existing and appropriate executive forum for deliberation of Federal and national water policy. It consists of Cabinet officers and other senior officials operating under the direct agencies of the President. This forum addresses matters of water policy, issue identification, and program coordination. From within the Council, interagency work groups are formed when specific issues require additional analysis and consideration. A recent example of this was the development of the President's policy for water project cost-sharing. This approach provides total integration with existing agencies and obviates the need for another coordinating body. Indeed, title IX would relegate water policy to one more board--we are convinced that maintaining direct Presidential involvement through his own Cabinet Council is a better approach.

Title IX also addresses water resources planning policy. In March of 1983, the Administration adopted the new Principles and Guidelines to replace the old Principles and Standards which had contributed to the slowdown of water project development for several years. We believe that the new Principles and Guidelines will be effective and useful and that it is imperative that they be left in place long enough for a fair evaluation of their effectiveness.

let me now address a series of specific matters within the S. 1739. Regarding section 601(a), as stated in the President's letter to Senator Laxalt, the water project financing and cost-sharing policy of this Administration is:

- All Federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arr- ,ements for every project within its respective area of responsibility.

Section 601(a) provides that hydroelectric power construction shall not be initiated until the appropriate Power Marketing Administrator (PMA) has determined that the surplus power produced can, in fact, be marketed under the condition required by Federal power marketing law. It further provides that contracts for the sale of power by a PMA may provide for an advance of funds by the purchaser for transfer to the Federal agency constructing the project. As presently worded, this would require all contributed funds to be advanced to the PMA by the purchaser and then subsequently transferred to the construction agency, and this section should be deleted. Currently, the Departments of the Interior and Energy are currently developing a Memorandum of Understanding that will deliniate their respective roles and responsibilities with regard to cost sharing and financing arrangements for Federal hydroelectric projects under the President's policy. We also point out that the purchaser of the power may not be the same entity which contributes the up-front funding, as is the case in the modification to the Buffalo Bill Dam and Powerplant, State of Wyoming.

Section 217. We agree that all suits involved in the use of Missouri River water in a coal slurry development should be concluded as expeditiously as possible consistent with the interests of all of the parties.

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Section 224. We generally believe that provisions for mitigation of any loss of fish and wildlife resources should be part of water resource development. We are also convinced that these provisions should apply within reason to all Federal water resource agencies. It is the practice of the Bureau of Reclamation to implement authorized mitigation of fish and wildlife losses concurrently with project construction to the extent practicable. This is just good construction management.

On occasion, the Bureau has provided for mitigation of fish and wildlife losses at projects already constructed but usually this is done when the Congress indicates an existing need. While we do have concerns about some provisions on section 224 of S. 1739, we do not have a formal position at this time.

Section 701(b)(10) authorizes the Gregory Country, S.D. Pumped Storage Facility with an expected cost of $1.28 billion. Included in that project is $100 million for associated water supply and irrigation features to be undertaken by the Secretary of the Interior.

In 1981, Reclamation considered a traditional 50,000 acre irrigation development in conjunction with this pumped storage facility. Using 1980 costs and energy values the project was found economically infeasible, so the study was not pursued. Reclamation has not studied in detail municipal water supply associated with the Gregory County project, so we cannot comment on the feasibility of such measures.

Mr. Chairman, this concludes my prepared statement. I will be please to answer any questions you have.

THE WHITE HOUSE

WASHINGTON

January 24, 1984

Honorable Paul Laxalt
United States Senate
Washington, D.C. 20510

Dear Paul:

Some time ago, you and 14 of your colleagues wrote to me expressing your concerns regarding water project development. I appreciated receiving this valuable counsel which has helped crystalize the extensive discussions within the Administration on this vital subject.

We all agree on the goals. These goals are to revitalize the magnificent water development programs launched early in our Nation's history. The Federal-State partnership has succeeded even beyond the dreams of those who developed the concept so many decades ago. This partnership has helped create abundant year-round water, electric and food supplies; reduced flooding, and provided low-cost inland, coastal and oceanic waterborne transportation. In addition, millions of Americans have enjoyed vast new opportunities for water-related recreation.

Providing enough high quality water promptly to those who need it is a task that has confronted Americans since the earliest days of our national experience. In the first summer at Plymouth, the Pilgrims experienced a summer drought that nearly ruined their crops. More than 350 years later, Americans had to contend with flooding on the Mississippi and the Colorado, and drought throughout most of the rest of the Nation. The lesson of these events is clear. Providing enough high quality water where and when it is needed is a never-ending process.

This Administration is committed to working with the States, local entities and those private sector interests concerned with water development all across America. We are rebuilding the Federal-State partnership so that we can resume water development efforts to avert water crises in the coming decades. We have accomplished the following:

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- Re-established the policy of State primacy in water rights resulting in less interference from the Federal Government in water resources management.
  - -- Reinforced State primacy by the repeal of a Federal non-reserved water rights opinion.
  - -- Established and successfully implemented a process for negotiated settlements of Indian water rights disputes.
  - -- Offered States the option of having Federal reserved water rights within their boundaries expeditiously inventoried and quantified to enhance their management capability.
- Implemented the Reclamation Reform Act of 1982 to recognize advances in agricultural technology and the market economy based on the family farm, giving these farmers an opportunity to build commercial operations without unrealistic limitations on their access to land and irrigation water.
- Established new Principles and Guidelines for water project planning to remove cumbersome regulations and promote flexibility in planning, thereby encouraging water resources development.
- Elevated water resources decisionmaking to the level of the Cabinet Council on Natural Resources and the Environment, chaired by the Secretary of the Interior.
- Presented to Congress new project construction proposals incorporating increased non-Federal financing based on the tangible economic returns produced by the projects.

All of these actions have helped to rebuild and strengthen the foundations of the Federal-State partnership so we can move forward to develop much needed, environmentally sound and economically prudent water resources projects. We have made numerous studies and conducted extensive discussions within the Administration in quest of ways that the Administration, the Congress, the States, and the American people can develop true partnership arrangements that recognize the realities of today's economics and tomorrow's environment. We are gratified that Congress is now addressing the key issues related to water project cost sharing and financing.

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Water development needs, geography, climate, economy, fiscal capacity, and Federal interests all vary from State to State, and from region to region. Furthermore, the Federal Government has made prior commitments to individual States with regard to water development within their borders. During the past months, I have fully considered the views expressed by you, your colleagues, the Cabinet Council on Natural Resources and the Environment, and many of the Governors regarding how the Federal Government might participate in water project development and project financing under these conditions. Traditionally, many Federal water project beneficiaries have repaid the construction costs of their projects, but we all agree new partnership arrangements will be necessary to finance any additional projects in the future.

It is time to conclude the discussion and to establish a national water project financing policy so that we can get on with the job of completing projects where commitments already have been made and undertaking new construction starts to meet the country's future needs.

Indeed, the construction of storage reservoirs has not kept pace with the increasing demand for water. As a result, our water supply is less reliable and more vulnerable to drought than it was a decade ago. We must develop even better ways to work together effectively. We will have to make the best use of the water we have if we are to avoid serious future problems. I am convinced that by working with State and local governments we can solve the problems of flood, drought, and quality.

The water project financing and cost-sharing policy of this Administration is:

- All Federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arrangements for every project within its respective area of responsibility.

- Prior commitments to individual States with regard to water development within their borders must be considered and shall be a factor in negotiations leading up to project construction.

- Consistency in cost sharing for individual project purposes, with attendant equity, will be sought.

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- Project beneficiaries, not necessarily governmental entities, should ultimately bear a substantial part of the cost of all project development.

- Safety problems at Federal dams should be corrected as expeditiously as possible. The cost of safety work should be borne by the Federal Government. However, if additional economic benefit results from the modification, appropriate cost sharing among the beneficiaries shall be allocated by the appropriate Secretary. Criteria to determine dam safety designation shall be developed by an interagency technical team in consultation with non-Federal parties.

- The costs incurred by the Federal Government in project planning generally will be shared with project sponsors. Specific arrangements will differ among agencies because of their differing planning, authorizing, and funding procedures.

- Once financing, cost sharing, and cost recovery arrangements have been agreed to, they will be reviewed by the Office of Management and Budget and submitted to the Congress for ultimate disposition.

This process will result in arrangements that are workable, fair, just, and practical. It will put into place the final building blocks in an improved program to meet America's current and impending water needs while recognizing Federal budgetary realities.

I sincerely appreciate your cooperation on this subject. Working together, we can move ahead into a new era of water project development for the benefit of the Nation and all Americans.

Sincerely,

/s/ Ronald Reagan

ADMINISTRATION RESPONSES TO ADDITIONAL QUESTIONS

In support of the Committee's expedited review of, and action on sections in S. 1739 of potential jurisdictional interest, members of the Committee requested that the Administration provide responses to a series of questions. The following partial responses were received by the Committee on April 26, 1984, from the Department of the Interior, with the concurrence of the Office of Management and Budget.

QUESTIONS SUBMITTED BY SENATOR MCCLURE

General Questions:

Interior: Please provide comments and views on the following provisions of S. 1739: Sections 210, 216, 217, 219, 220, 224, 301, 308, 313, 314, 316, 324, 328, 701 (b) (10), titles IV, VI, VIII, and IX.

A. Section 219. Ogallala Research and Development Act--While we recognize the seriousness of the problem being addressed we oppose this section.

(1) This section is unnecessary given the great amount of research already conducted by numerous State and Federal agencies, and the likely passage of other legislation under consideration address the same areas: H.R. 71, the High Plains States Ground Water Demonstration Program Act, and H.R. 2867, an amendment to the Solid Waste Disposal Act creating a National Groundwater Commission are awaiting floor action.

(2) H.R. 71 provides for planning and construction of a number of aquifer recharge projects in Ogallala Aquifer States as well as in other Western States. These projects will demonstrate the feasibility of various means of aquifer recharge.

A. Section 224. We generally believe that provisions for mitigation of any loss of fish and wildlife resources should be part of water resource development. We are also convinced that these provisions should apply within reason to all Federal water resource agencies. It is the practice of the Bureau of Reclamation to implement authorized mitigation of fish and wildlife losses concurrently with project construction to the extent practicable. This is just good construction management.

On occasion, the Bureau has provided for mitigation of fish and wildlife losses at projects already constructed but usually this is done when the Congress indicates an existing need. The general authority this section would provide is unnecessary, and consequently we oppose section 224. Moreover, we oppose acquisition of water rights by condemnation.

A. Title VIII. We strongly oppose the proposed loan programs that would be authorized by title VIII of S. 1739. These loans would be for municipal and industrial water supply system repair, rehabilitation, expansion or improvement, or for construction of single purpose water supply systems. To expand Federal water resources agencies' roles to include massive programs such as these, when there is such concern over budget levels and the size of the Federal establishment is totally inappropriate.

While there may be a national infrastructure problem, State and local solutions are available and being used, and that the water resource aspect of infrastructure is under reasonable control. Massive Federal intervention in what is--and should remain--a local responsibility is not a logical response.

A. Title IX. We strongly oppose the provisions of title IX, which would create another Federal entity, known as the National Board of Water Policy, with functions duplicating existing activities. While we do not disagree with some of the objectives of the proposed National Board, most of these matters are being adequately addressed by existing entities. Therefore, there is clearly no need for a new organization, particularly one of the dimensions described and with its attendant costs.

The Cabinet Council on Natural Resources and Environment is the existing and appropriate executive forum for deliberation of Federal and national water policy. It consists of Cabinet officers and other senior officials, operating under the direct agencies of the President. This forum addresses matters of water policy, issue identification, and program coordination. From within the Council, interagency work groups are formed when specific issues require additional analysis and consideration. A recent example of this was the development of the President's policy for water project cost-sharing. This approach provides total integration with existing agencies and obviates the need for another coordinating body. Indeed, title IX would relegate water policy to one more board--we are convinced that maintaining direct Presidential involvement through this own Cabinet Council is a better approach.

Title IX also addresses water resources planning policy. In March of 1983, the Administration adopted the new Principles and Guidelines to replace the old Principles and Standards which had contributed to the slowdown of water project development for several years. We believe that the new Principles and Guidelines will be effective and useful and that it is imperative that they be left in place long enough for a fair evaluation of their effectiveness.

Specific Questions

B. Section 224

5. Q. Is the condemnation of water rights supported by the Administration for the purpose of fish and wildlife mitigation?

A. The Administration opposes condemnation of water rights. It is our policy to acquire water rights needed or proposed pursuant to State water law.

D. Title IX (Water Board)

1. Q. Do you believe that your participation in the Water Policy Board will increase or decrease your effectiveness in formulating national water policy? In your view, will this Board replace the Cabinet Council designated to review water policy?

A. (a) From past experience, having a separate organization with limited capability only tended to make the whole process more tedious. The Water Council was abolished because it was deemed ineffective, and a new Board would not have the leverage the Cabinet Council has now. The Cabinet Council serves, as a successful forum for the exchange of views on policy issues.

(b) Having another center of influence will complicate policy making and it is likely that the Board would compete with but never replace the natural decision making atmosphere of the Cabinet.

2. Q. How would you define "Federal water and related land resources management and development plans"? (S. 1739, pp. 159-160) What would constitute a "water or related land resources project"? (S. 1739, p. 110).

A. "Federal water and related land resources management and development plans" are defined by the Principles and Guidelines as "per-or post authorization project formulation or evaluation studies undertaken by the Bureau." These studies are undertaken to alleviate problems and take advantage of opportunities in order to contribute to national economic development. Usually, these studies result in a recommended Federal action such as building a dam, managing a flood plain or conserving water. In the past, such studies have been denoted as feasibility studies. Currently, they are denoted as Secretary's Reports/Environmental Impact Statements.

3. Q. Would you consider the principles, standards, and procedures established by the board to be legally binding upon the actions of your agency?

A. Yes.

4. Q. What problems or objectives would you foresee in reimposing the principles, standards, and procedures promulgated by the Water

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Resources Council and in effect on March 9, 1983? What would this do to projects currently in the planning process?

A. During any change of rules or regulations it is a fact that project planning is materially affected. One cannot proceed with the planning process until the goals and rules are known. There would undoubtedly be delays in most all planning activities in process. This would be contrary to the whole intent of the legislation--to get water development back on track.

In addition the administrative and regulatory process to accomplish the seemingly insignificant action of reinstating the Principles and Standards is costly and time consuming and diverts those very same resources that could better be used in getting on with the business of providing the nation with an adequate water supply.

5. Q. Has a project proposal ever been transmitted to the Congress with a recommendation for authorization which utilized the principles and standards? How about the principles and guidelines? When was the last such submittal to the Congress?

A. (a) Yes. Two recent examples of project proposals utilizing the Principles and Standards that are in the final stages of Administration review prior to submittal to Congress are Anderson Ranch Powerplant Third Unit and Minidoka Powerplant Rehabilitation and Enlargement.

(b) The Principles and Guidelines took effect on July 8, 1983. The first report that the Bureau completed under the Principles and Guidelines was the Lower Gunnison Basin Unit. There were twelve other reports completed between July 1983 and March 1, 1984, but these were either concluding investigations or special reports. Current project plan formulation activities are being conducted under the Principles and Guidelines.

QUESTIONS SUBMITTED BY SENATOR WALLOP

QUESTIONS FOR MR. HORN

3. Q. Section 224 of S. 1739 provides the U.S. Army Corps of Engineers with authority to acquire water, or interests in water by condemnation for projects which have not yet been started under automatic discretionary authority of the Corps up to a statutory cap of $7,500,000 per project. As you interpret these provisions:

(a) Do you believe they would in any way apply to Bureau of Reclamation projects?

A. No

(b) How do these provisions conflict with the provisions of the Northwest Power Planning Act?

A. There could be overlapping of funds or projects of the Northwest Power Planning Act.

(c) If this authority were to apply to a Bureau of Reclamation project, is there any instance is which a Federal reserved right could be claimed as a method by which water were to be obtained for fish and wildlife mitigation purposes.

A. It is possible depending on the specific project authorization or plan.

(d) Do you construe the proposed water acquisition and mitigation authority as it is presently written to allow the Federal Government to acquire minimum instream flows of water in States where the State statutes do not define minimum instream flow to be a beneficial use of water?

A. As written in section 224, it most likely does.

4. Q. Would you describe how your agencies coordinates with other agencies and State water entities to resolve water resource planning and/or conservation issues. Is the President's Cabinet Council on Resources and the Environment adequate to carry out Federal coordination of water policy issues, or is something more required? would a lower level organization be better?

A. (a) Coordination of water resource issues with other agencies and State water entities occurs at many levels depending on the nature of the issue that arises. We have agreements to meet together on an organizational or function basis at regular intervals so that lines of communication remain intack. On emerging issues we coordinate as the need arises.

(b) At the level at which the Cabinet Council operates it is quite adequate. In fact, since the decisions are made in quorum by the agency heads themselves the implementation of the decisions is direct and timely.

(c) When major issues need more technical and precise discussion the Cabinet Council forms a working group at a lower level, so this is already a mechanism used. At even lower levels there are already many forums for policy interchange and discussion. It must be realized that the lower the level in the organization the more narrow the issue that is likely to be discussed. Again the narrow issue groups are formed as needed.

ADDITIONAL VIEWS OF SENATOR WALLOP

While I voted for the Committee amendments to S. 1739, I remain opposed to provisions in Section 224 of S. 1739 giving the U.S. Army Corps of Engineers discretionary authority to condemn water for fish and wildlife mitigation purposes. I also oppose the concept of a National Water Policy Board which Title IX would authorize.

Because both provisions exceeded the scope of the narrow jurisdictional referral to the Senate Energy and Natural Resources Committee, I did not offer a formal amendment in Committee to strike these provisions. I must admit, however, that I was sorely tempted. Therefore, I shall vigorously pursue Senate Floor amendments to strike both provisions from the bill.

Congressional policy has historically been one of protecting, wherever possible, state created water rights. Water rights are a form of real property, protected by state and Federal laws. Depending on the legal system used in the locale, water rights may originate in ownership of riparian lands or be acquired by statutorily-recognized methods of appropriation. Riparian lands are those which immediately adjoin a river. Riparian water rights are the right to use, on that land, an amount of water considered "reasonable", which means that amount which allows maximum use by a riparian landowner without unreasonably impairing other riparian owners.

Appropriation systems, predominant in western states, permit use of a carefully designated amount of water, regardless of land ownership or place of use. Allocations among users are made by temporal priority. Differences between the two basic systems, however, are regulated by state permit systems which require all water users to obtain finite determinations of their water rights.

Civil works water resource projects are built under Congressional authorization. They usually are not subject to concurrent authorization by state agencies. Where projects involve interbasin transfers, interstate compacts, or Supreme Court allocations, projects must be designed to recognize water rights claimed by the residents of an affected state.

Congressional policy has historically been to follow state water law when acquiring water for federal needs. Since water in an appropriation doctrine state is not available unless it is either unappropriated, or being put to a beneficial use, its condemnation usually means the water is taken away from an agricultural, municipal, or industrial use.

Arid land in the west is valueless without water. Condemnation authority for fish and wildlife mitigation purposes in the hands of a federal agency dedicated to building water resource projects is especially threatening to western water right holders. It creates uncertainty and potentially jeopardizes the economy.

Although the Constitution entitles holders of a property right to "just compensation" for a government taking, S. 1739 does not define compensation. This leaves the very agency of government to which this discretionary authority to condemn is given to determine, under the federal rule making process, both the terms of injury warranting compensation, and the price of compensation. I find this unacceptable.

The U.S. Army Corps of Engineers does not need water condemnation authority to construct water resource projects. Wildlife conservation needs are adequately met under the Fish and Wildlife Coordination Act, 16 U.S.C. 663.

This Act allows construction agencies like the U.S. Army Corps of Engineers to obtain land, water, and interests therein as may be reasonably necessary to preserve and assure for the public benefit the wildlife potential of a particular project area. Fish and wildlife receive equal consideration with other project purposes. Mitigation is provided to the extent practicable through good planning and design. However, water obtained for fish and wildlife mitigation must be obtained pursuant to a specific congressional authorization.

Congressional authorization of each Corps project where water is needed for fish and wildlife mitigation purposes may be more time consuming than giving the Secretary of the Army discretionary authority up to a $7.5 million cap per project. Nevertheless, it does assure that competing interests are balanced. Environmental needs are met at the same time. Deleting the water condemnation authority in Section 224 of S. 1739 would leave Congress, and not the Secretary of the Army, in the driver's seat when water is needed for fish and wildlife mitigation for Corps projects. I believe this is where the authority should remain.

As to whether or not the Nation needs a National Water Policy Board, I believe the answer is a definitive No! This Board is duplicative of existing law and federal activities.

The Cabinet Council on Natural Resources and Environment is the existing and appropriate forum for any water policy planning and coordination the federal government may need to do. Moreover, the binding standards and principles proposed by Section 902 of Title IX would constrict, rather than enhance water project planning at the federal level. Each project is different. Each needs a different solution. The country is both as geographically and meteorologically diverse as are its water needs, to say nothing of the laws regulating them under state regulated systems.

To the extent coordination for water planning is needed at the federal level, the new Principles and Guidelines adopted by the Administration in March of 1983 meet those needs. These guidelines can be found in Section 711.1 through 716.309 of Title 18 of the Code of Federal Regulations. They eliminate unnecessary duplication and waste at the Federal level. This approach to planning recognizes the need to be flexible where water resources are concerned.

A National Water Policy Board would also be costly at a time when the Federal deficit is reaching crisis proportions. Moreover, embodying the Board with federal agency status portends the first step towards federal regulation of all water at state expense. Noth-

ing less could be the end result of binding principles and standards for federal participation in the preparation of comprehensive regional or river basin plans, or for the formulation and evaluation of federal water and related land resource management plans. This is the last thing we need in the west. It should be equally unacceptable in riparian doctrine states.

If Federal agencies are having water policy coordination problems, then the solution is one of coordination and cooperation with the states. We do not need another federal agency with its attendant costs, bureaucracy and red tape. That would be a disservice to the nation.

The states have come of age. In the west the states have the expertise in water resource management. State laws protect water rights under state water codes put into place by State legislatures. There is no federal common law of water, nor should there be. Nor should there be a federal agency trying to regulate water at the federal level.

I strongly endorse the President's policy of state primacy in water rights resulting from less interference from the federal government in water resources management. This is the direction in which we should be going.

MALCOLM WALLOP.

ADDITIONAL VIEWS OF SENATOR WARNER

While I voted to report S. 1739, my vote went only to those provisions of S. 1739 which were referred to the Senate Committee on Energy and Natural Resources for legislative action.

In no manner should my votes on S. 1739 in the Senate Energy Committee be construed as supporting all those provisions which were not referred to the Committee. In fact, several provisions of this bill give me grave concern and unless amended would prevent me from voting for passage of S. 1739 when it is considered on the Senate floor.

Since I was elected to the U.S. Senate in 1978, a major water resources development law has not been passed. As a result, water projects are badly needed in many areas throughout our nation to maintain, expand and improve the system, while keeping our nation's waterway system competitive with those of other exporting nations.

At a special hearing on January 25, 1984, Senator Abdnor was very gracious in permitting Senator Trible, Governor Robb of Virginia, and me to express our views on this legislation and the impact it could have on Virginia. Since then, we have worked together and appear to have resolved some of our concern.

However, several issues still remain. Two are particularly onerous in effectuating passage of legislation which will improve our nation's deep-draft harbors.

The first is the bill's failure to recognize that the nation would receive any benefit from ports being deeper than 45 feet. Ports deeper than 45 feet benefit this nation immeasurably by supporting our national security, providing enormous economic benefits, and allowing our national port system to remain competitive as the world's transportation is modernized with deep-draft vessels. Recognition of this benefit to the nation must be through a balanced and fair cost-sharing formula for deep-draft projects.

The second issue is one of inequity. Our national port system is a unified system whereby federal treatement should be offered equitably to ports desiring projects. Where the Congress is carving out new rules and treatment for the modernization of our waterway system, this treatment should be equitably accorded throughout. Title X of S. 1739, as it is currently written, violates this basic premise of equity. It singles out one port in the entire United States to receive federal cost-sharing for deepinging past 45 feet to accommodate super collier vessel and denies comparable treatment to other ports.

In order for our nation to maintain its competitiveness in international trade, it is important that we accept the new generation of super colliers that aggressive exporting countries are utilizing to move bulk commodities, by deepening additional U.S. ports past 45 feet.

Super colliers significantly reduce the costs of ocean transportation of bulk commodities through economies of scale. Commodities—particularly coal, grain, and iron ore—are increasingly being transported by super collier. Such modernization offers a cost advantage to our goods, bound for export, in the competitive world markets. For the United States products to share in this market, we must provide a structure of laws which gives non-federal port systems the option of deepening their ports on par with all other ports within the United States' system.

By restricting federal financial support for deepening past 45 feet to only one additional port in the entire U.S., we are not helping to increase our nation's competitive position. All ports should be offered the same federal cost-sharing opportunity to undertake deepening past 45 feet, if the respective states and localities commit to pay their part of the cost.

Because of these two major items of concern, I believe this bill is still ill-equipped to achieve our nation's goals of improving its harbors and increasing our exports. In my judgment, these items must be corrected if this bill is to pass the Senate.

JOHN W. WARNER.

ADDITIONAL VIEWS OF SENATOR BRADLEY

The Water Resources Development Act of 1983 is an important measure and deserves speedy passage. My own state of New Jersey is just now digging out from a serious flood that drove 6,000 people from their homes. Estimates of the damage range from $141 to $250 million. The long delay in federal funding has held up construction of flood control projects which might avoid future losses. The Corps of Engineers has completed studies on three New Jersey projects which are authorized in this bill. Two of these have been awaiting action by Congress since 1978. The third project was authorized in 1976 but has never been funded. Every year we delay increases the chance that another destructive flood will occur.

Although passage of this bill is badly needed, it contains a serious flaw. I am referring to the provision that would require a minimum non-federal contribution of 35 percent for urban and rural flood control projects.

In principle, cost-sharing is appropriate for public works projects. Local contribution demonstrates the locality's belief in the project's value. It reduces the tendency for a locality to agitate for a project simply to capture "free" federal money. In fact, cost-sharing has been traditional in one form or another in federal water projects.

But cost sharing requirements must recognize the difference in public works projects. Some projects such as hydroelectric power projects, port development, irrigation, municipal and industrial water projects, and locks and dams have a saleable product, or easily identifiable beneficiaries, or both. It is possible to identify beneficiaries of these projects who can be billed for the return of project costs.

But flood control projects don't have a product that can be billed by the gallon or kilowatt-hour. They prevent damage from disasters that occur on an intermittent basis. It may even be hard to prove exactly which property was saved from damage by a given project in a given storm. Depending on the watershed, a flood control project may help protect property more than a thousand miles downstream.

Current law recognizes this by imposing no fixed criterion for local contribution to flood control projects. Instead, non-federal interests must provide all rights-of-way, easements, and relocations. This means that the non-federal contribution has varied from less than 5 to more than 50 percent from project to project.

Based on these considerations. I support cost-sharing, but I believe it is inappropriate to impose fixed minimums for non-federal contributions for flood control projects. I believe that the imposition of a fixed minimum contribution of 35% could cripple a number of badly needed flood control projects. Therefore, I intend to introduce a floor amendment to reduce or eliminate the provision for a fixed minimum local contribution.

National Board of Water Policy

I support the establishment of the National Board of Water Policy, and believe it should be given the necessary membership and resources to carry out its intended mission. I was disappointed by the Committee's action to eliminate the Secretary of the Interior as a participant in the National Board of Water Policy. This action would remove from the Board a major sponsor of water resource development projects, crippling it in its mission of developing uniform principles and standards for water resources planning. I will support efforts on the floor to restore the Department of the Interior to membership on the Board.

The Board is important to develop consistent and uniform policies and regulations. Such policies and regulations will set the economic development, environmental quality, and water conservation objectives of each project. The Board will develop a standardized set of principles and procedures for cost-benefit analyses of all agencies and will provide a forum for the reduction of conflicts among competing agencies. I believe it is important for the success of all these efforts that the Department of the Interior be a part of this Board.

In addition, the Board will have a State Advisory Committee, established by Section 904. This will give States an opportunity to express their concerns and submit their recommendations regarding federal water resources programs.

Critics of the Board have claimed that it simply duplicates the function of the existing Cabinet Council on National Resources and the Environment, but the truth is otherwise. The Cabinet council does not include the Army Corps of Engineers, and thus excludes one of the largest federal water resource development agencies. Furthermore, meetings of the Cabinet Council are closed to the press and the public. The results of its deliberations are cloaked behind the secrecy of Executive Privilege. In contrast, Section 901(d) specifically provides that the National Board of Water Policy will be subject to the provisions of title 5, section 552b of the United States Code, known as the Government in the Sunshine Act. This ensures that water resource policies and regulations will be developed in the open, as they should.

Another provision of Title IX restores the Principles and Standards of Water Resources Planning, as they were in effect on March 9, 1983. These Principles and Standards were the result of several years of work; they represented a major advance in putting national water resources planning on a uniform basis. Under the direction of the Office of Management and Budget, those Principles and Standards were replaced with a non-mandatory set of Principles and Guidelines. S. 1739 appropriately restores the original Principles and Standards. If they are to be changed, it should occur only through an open process giving all of the federal agencies that have a major impact on water resource development an opportunity for input. The National Board on Water Resources Policy would provide such a process.

Bill Bradley.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law would be made by section 217, section 224, title VI, section 701(b)(10), and title IX of S. 1739 as ordered reported by the Committee.

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